

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

ORDER

Adopted: July 15, 2022

Released: July 15, 2022

By the Chief, Wireline Competition Bureau

I. INTRODUCTION

1. In this Order, we address a Petition for Waiver filed by Blue Casa Telephone, LLC (Blue Casa) requesting a one-time waiver of the Federal Communications Commission's (Commission's) rules requiring a biennial audit for certain Lifeline Eligible Telecommunications Carriers (ETCs).¹ Blue Casa contends that a third-party audit is unnecessary because its Lifeline offerings are stringently regulated and supervised by the California Public Utilities Commission (CPUC) and the Universal Service Administrative Company (USAC). The Wireline Competition Bureau (Bureau) finds that Blue Casa has not met the standard for a waiver from the Lifeline biennial audit requirement, and as further discussed below, we deny Blue Casa's petition for waiver.

II. BACKGROUND

2. In the *2012 Lifeline Order*, the Commission adopted a biennial audit requirement, to "strengthen our existing low-income oversight process to reduce improper payments and mitigate the potential for program violations."² The biennial audit requirement directed certain Lifeline providers to hire an independent auditing firm to "assess the ETC's overall compliance with the program's requirements."³ The biennial audits are intended to focus on a provider's "overall compliance program and internal controls regarding Commission requirements implemented on a nationwide basis."⁴ For instance, biennial auditors are meant to review an ETC's compliance with the Lifeline program rules

¹ See Petition for Waiver of Blue Casa Telephone, LLC Regarding Biennial Audit Requirements, WC Docket Nos. 11-42, 09-197, 10-90, at 1 (filed May 17, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10517798100669> (Blue Casa Petition).

² *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6780-81, para. 285 (2012) (*2012 Lifeline Order*).

³ *Id.* at 6782, para. 291.

⁴ *Id.* at 6782-83, para. 292.

requiring advertising of Lifeline availability, document retention, and adherence to the Lifeline program's usage requirements.⁵

3. In the *2019 Lifeline Order*, the Commission adopted a new approach for determining when an ETC would be subject to biennial audits. This approach required the assessment of various risk-based factors—rather than the level of Lifeline disbursements—to identify ETCs that must complete biennial audits.⁶ Risk-based audits direct resources to where they are needed most—the monitoring of ETCs that exhibit certain risk factors that warrant further investigation through an audit.⁷ The Commission anticipated that the shift may result in cost savings for ETCs that were previously targeted simply due to their size.⁸

4. In late October 2021, USAC notified impacted Lifeline ETCs that they would be subject to a biennial audit of Lifeline activities conducted during the 2019 calendar year. Blue Casa filed its petition for waiver in May 2022. Blue Casa's petition contends that since it operates exclusively in California, its Lifeline activities are highly monitored by the CPUC, which has a significant role in confirming a subscriber's eligibility to participate in the Lifeline program.⁹ Blue Casa also contends that the cost of completing a third-party audit would be approximately \$20,000 and, considering Blue Casa's relatively small Lifeline subscriber base, such cost would be punitive.¹⁰ The Bureau sought comment on Blue Casa's petition and received no comments.¹¹

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁵

⁵ See, e.g., *Wireline Competition Bureau Announces Release of Final Lifeline Biennial Audit Plan*, WC Docket No. 11-42, Public Notice, 29 FCC Rcd 3568, 3571 (WCB 2014).

⁶ See *Bridging the Digital Divide for Low-Income Consumers et al.*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10928-30, paras. 100-02 (2019) (*2019 Lifeline Order*). The Commission directed USAC to develop and submit for approval by the Office of the Managing Director and the Bureau a list of proposed risk-based factors that would trigger a Biennial Audit under section 54.420(a) of the Commission's rules in accordance with the guidance provided in the Government Accountability Office's (GAO's) Yellow Book and the Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Internal Control*. *2019 Lifeline Order*, 34 FCC Rcd at 10928-30, para. 101.

⁷ *2019 Lifeline Order*, 34 FCC Rcd at 10928-31, para. 101.

⁸ *Id.*

⁹ Blue Casa Petition at 1-2.

¹⁰ *Id.* at 2-3.

¹¹ See *Wireline Competition Bureau Seeks Comment on Petition Filed by Blue Casa Telephone, LLC*, WC Docket Nos. 11-42, 09-197, 10-90, Public Notice, DA 22-569 (WCB 2022).

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

6. The Commission adopted the biennial audit requirement as part of its efforts to address “growing concerns with waste, fraud, and abuse in the [Lifeline] program”¹⁶ Blue Casa’s primary argument in support of its petition is that such an audit is unnecessary because a large amount of its Lifeline activities are monitored by the CPUC’s Third Party Administrator and by USAC.¹⁷ We disagree with this characterization. While the CPUC and USAC play a significant role in confirming eligibility of subscribers to participate in the Lifeline program and preventing duplicative support, Lifeline ETCs have an independent obligation to comport with the Commission’s rules.¹⁸ Those rules include requirements that are not necessarily overseen by a state administrator’s eligibility verification process, such as Lifeline ETCs’ obligation to maintain documentation and certifications provided by state administrators before they can claim a subscriber for reimbursement.¹⁹ Additionally, there are certain Lifeline requirements, like the requirement to advertise the availability of the Lifeline-supported service, that do not directly involve a state administrator or USAC at all, and the Commission’s program audits, including the biennial audits, are critical to ensuring that ETCs are in compliance with such requirements.²⁰

7. Blue Casa also contends that complying with the biennial audit requirement would result in punitive costs for their limited Lifeline operation.²¹ In the first half of 2022, Blue Casa was reimbursed approximately \$16,000 per month from the Lifeline program, and from 2019 through 2021 Blue Casa was reimbursed in excess of \$1.1 million.²² Additionally, Lifeline ETCs are obligated to confirm their financial and technical capability to participate in the Lifeline program,²³ and satisfying any Lifeline audit obligations should be well within such capabilities. Given these facts, we find it unpersuasive that the cost associated with the completion of the biennial audit is too much for Blue Casa to bear. Since Blue Casa’s petition does not set forth special circumstances that warrant deviation from the biennial audit requirement, and such a deviation would create unacceptable risk to program integrity, we do not believe that the public interest would be served by granting Blue Casa’s petition.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Blue Casa Petition is DENIED.

¹⁶ 2012 *Lifeline Order*, 27 FCC Rcd at 6780, para. 284.

¹⁷ Blue Casa Petition at 1-2.

¹⁸ For example, the Enforcement Bureau issued a Public Notice in 2019 noting that “[n]either the NLAD nor the National Verifier creates a ‘safe harbor’ that relieves ETCs of their responsibility for only claiming Lifeline consumers who are actually eligible for the program under the Commission’s rules.” *FCC Enforcement Advisory: Lifeline Providers Remain Liable For Ensuring The Eligibility Of Their Subscribers To Receive Lifeline Service*, Public Notice, DA-19-1211 (EB 2019). Additionally, we issued a Public Notice in 2017 stating that “while the National Verifier will . . . fight against waste, fraud, and abuse, its implementation will not provide a ‘safe harbor’ for ETCs that improperly claim or obtain reimbursement. Providers must continue to take steps to detect and prevent fraud and improper claims.” *Wireline Competition Bureau Reminds Eligible Telecommunications Carriers of Their Ongoing Responsibility To Claim Lifeline Support Only For Eligible Low-Income Consumers*, Docket No. 11-42, Public Notice, 32 FCC Rcd 5129 (WCB 2017).

¹⁹ See 47 CFR § 54.410(b)(2), (c)(2), (f)(3).

²⁰ See 47 CFR § 54.405.

²¹ Blue Casa Petition at 2-3.

²² See USAC, *Funding Disbursement Search*, <https://apps.usac.org/li/tools/disbursements/results.aspx> (last visited July 6, 2022).

²³ See, e.g., 47 CFR § 54.201(h).

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau